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Supreme Court, U.S.
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No. 01-1564

In The

Supreme Court of the United States

FRANKLIN DAVID CHAMBERS, M.D.,

Petitioner,

v.

HAROLD PATRICK STERN, M.D.;
GEORGE HAMILTON, M.D. AND
UNIVERSITY OF ARKANSAS
BOARD OF TRUSTEES,

Respondents.

On Petition For A Writ Of Certiorari To The Arkansas Supreme Court

RESPONSE TO RESPONDENTS' BRIEF IN OPPOSITION

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15 pgs

QUESTION PRESENTED FOR REVIEW

Can a state court avoid review by the U.S. Supreme Court by not reaching the constitutional issues before it?

PARTIES TO THE PROCEEDING BELOW

The petitioners in this court, Franklin David Chambers, M.D., an individual, was the plaintiff in the Circuit Court and the appellant in the Supreme Court. The respondents, Harold Patrick Stern, M.D., George Hamilton, M.D., and the University Of Arkansas Board Of Trustees, were the defendants in the Circuit Court and the appellees in the Supreme Court.

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OPINIONS BELOW

The Arkansas Supreme Court opinion that the petitioner asks this Court to review is *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees* (Arkansas Supreme Court Case No.: 01-568; Opinion dated January 17, 2002, Unpub.). The Circuit Court opinion is *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees* (Pulaski County Circuit Court No.: CV 97-7272; Order dated October 23, 2000).

JURISDICTIONAL BASIS

This petition asks the Court to review the January 17, 2002 Opinion and Order of the Arkansas Supreme Court affirming the Pulaski County Circuit Court, Sixth Division's Orders granting summary judgment to all defendants and dismissing the petitioner's claims.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

United States Constitution, Amendment XIV, Section 1 (excerpt; full text set forth in Appendix):

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws."

REPLY TO RESPONDENT'S QUESTION NO. 1

A CAREFUL REVIEW OF THE RECORD REFUTES RESPONDENT'S CONTENTION THAT CONSTITUTIONAL ISSUES WERE NEVER ARGUED BELOW.

I. CONSTITUTIONAL ISSUES WERE ADDRESSED IN DETAIL IN PLAINTIFF'S INITIAL COMPLAINT

From the Complaint onward, basic Constitutional rights were considered and discussed by Petitioner:

> "24. The acts and actions of the Defendant Stern in conducting evaluation and therapy of the parties to the Divorce Action and to the Chambers Children has and continues to violate the rights to life, liberty, and the pursuit of happiness of the Plaintiff Chambers in his relationship with the Chambers Children in violation of the rights of the Plaintiff Chambers under the Constitutions of the State of Arkansas and the United States of America and, as a direct and consequential result of such violations by the Defendant Stern and the Defendant Hamilton the Plaintiff Chambers has been severely damaged."
>
> *See* Complaint, Pg. App. 44, Petition for Writ of Certiorari, *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees*, US Supreme Court No. 01-1564.

II. CONSTITUTIONAL ISSUES WERE BRIEFED BY PETITIONER ON FIRST APPEAL BUT NOT ADDRESSED BY THE ARKANSAS SUPREME COURT

In the first Chambers Appeal, Point on Appeal No. 3 of Appellant's Brief reads:

> POINT ON APPEAL NO. 3: EXPANSION OF JUDICIAL IMMUNITY TO MEDICAL TREATMENT IS A DENIAL OF THE FUNDAMENTAL RIGHT TO A JURY TRIAL.
>
> *See* Pg. B1, Respondent's Brief in Opposition (last page); *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees*, US Supreme Court No. 01-1564.

Also in the first Appeal, in Appellant's Reply to Brief of Appellee, Pg. 13:

> "The Court of Appeals, State of Arkansas, used this basis, the Constitutional issue involved, as the criteria for transferring this matter to the Arkansas Supreme Court."

However, the Arkansas Supreme Court failed to reach the constitutional issues. By remanding the case back to the trial court the constitutional issues were never addressed because:

> "In light of our holding, we need not reach the merits of appellant's remaining arguments."
>
> *See* Pg. A13, Respondent's Brief in Opposition (last page); *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees*, US Supreme Court No. 01-1564.

Thus, Constitutional issues, although briefed and argued by Petitioner, were never addressed by the Arkansas Supreme Court in the first Chambers Appeal.

Contrary to assertions by Respondent, the fact that the Arkansas Supreme Court did not reach the issues is not sufficient, in and of itself, to deny this Petition for Writ of Certiorari. In support of this contention, Respondent cites *Webb v. Webb*, 451 U.S. 493 (1981). However, although *Webb* remains a good example of what this Court needs to avoid (a statutory issue disguised as a constitutional issue), it is not germane to the issues at bar. A more relevant case is *People of State of New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928), which states:

> "There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented.
>
> Of course the decision must have been against the claim of invalidity, but it is not necessary that the ruling shall have been put in direct terms. If the necessary effect of the judgment has been to deny the claim, that is enough."

III. CONSTITUTIONAL ISSUES WERE BRIEFED BY PETITIONER ON SECOND APPEAL BUT NOT ADDRESSED BY THE ARKANSAS SUPREME COURT

Constitutional issues were also briefed by Petitioner in the second Chambers Appeal:

> "This case involves the basic right to jury trial."
>
> *See* Appellant's Brief, Pg. B1, *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees* (Arkansas Supreme Court Case No.: 01-568)

Also briefed:

> "The Constitutional right to a jury trial should not be lost in the record now before this Court."
>
> *See* Appellant's Brief, Pg. B2, *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees* (Arkansas Supreme Court Case No.: 01-568)

And:

> "No reason exists under the record before this Court to deny Plaintiff his right to jury trial."
>
> *See* Appellant's Brief, Pg. B23, *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees* (Arkansas Supreme Court Case No.: 01-568)

Later, in Petitioner's reply to the brief of appellee Dr. Stern:

> "It has been previously noted that an unresolved question of law does exist in this case, and it is hoped it can be clarified, because, otherwise, a summary judgment procedure, trial by affidavit, is being used where due process would seem to require at least a full, evidentiary hearing."

See Appellant's Reply to Brief of Appellee, Pg. 11, *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees* (Arkansas Supreme Court Case No.: 01-568).

More relevant than Respondent's *Webb* in the second Chambers Appeal is this Court's decision in *Boynton v. Virginia*, 364 U.S. 454 (1960).

> On appeal the Virginia Supreme Court held that the conviction was "plainly right" and affirmed without opinion, thereby rejecting petitioner's assignments of error based on the same grounds of discrimination set out in his motion to dismiss in Hustings Court but not specifically charging that the discrimination violated the Interstate Commerce Act. We think, however, that the claims of discrimination previously made under the Act are sufficiently closely related to the assignments that were made to be considered within the scope of the issues presented to the State Supreme Court. We granted certiorari because of the serious federal questions raised concerning discrimination based on color.

The Virginia Supreme Court's assertion of being "plainly right" sounds surprisingly similar to the Arkansas Supreme Court's assertion that:

"On remand, the trial court made its decision."

See Pg. App. 44, Petition for Writ of Certiorari, *Franklin David Chambers, M.D. v. Harold Patrick Stern, M.D.; George Hamilton, M.D.; and University of Arkansas Board of Trustees* (US Supreme Court No. 01-1564).

In summary, Petitioner argued federal constitutional issues of major importance throughout the course of this litigation. Respondent's contention that federal issues were not developed or preserved in the courts below does not hold up to close scrutiny. The failure of the Arkansas Supreme Court to reach the constitutional issues should not bar review by the United States Supreme Court. In civil cases, due process has not actually failed until all remedies have been exhausted. It is only at the point we are now, this appeal of last resort to the U.S. Supreme Court, that failure of due process can be completely and properly argued.

REPLY TO RESPONDENT'S QUESTION NO. 2

RESPONDENT IS ERRONEOUS IN ITS INTERPRETATION OF PETITIONER'S REASONS FOR GRANTING THE WRIT OF CERTIORARI

Respondent's Question No. 2 in its Reply Brief appears to be a misinterpretation or misunderstanding of Petitioner's brief. Petitioner did not discuss the differences between the states and between state and federal entities' interpretations of judicial immunity as a *due process* issue. The words "due process" are not mentioned in this section of Petitioner's brief.

These differences were briefed by Petitioner as good and valid reasons why, according to Rules 10(b) and 10(c) of the United States Supreme Court, a Petition for Writ of Certiorari should be granted. These Rules indicate the character of reasons for consideration:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals; and
>
> (c) a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> *See* Rules of the Supreme Court, Adopted January 11, 1999, Effective May 3, 1999, Page 6.

These differences were briefed by Petitioner because the Supreme Court has determined through wisdom and experience that these types of cases are a priority for the Court's review. Petitioner cited numerous legal decisions both at the state and federal level which he believes support his contention that this case fulfills the requirements of both Rules 10(b) and Rule 10(c). Any contention that this is a new federal issue or based on a due process argument is erroneous and a misinterpretation of Petitioner's brief.

CONCLUSION

The questions and issues raised in Respondent's Reply Brief are not valid reasons or sufficient grounds to deny

the Writ. If allowed to stand, the Arkansas Supreme Court decision will, in effect, usurp and reassign the treating physician's paramount responsibility to his or her patient; thus turning one of the basic tenets of ethical medicine on its ear. The United States Supreme Court should grant this Petition for Writ of Certiorari because the issues are of substantial public interest, there is wide diversity of interpretation on similar issues among the states and between the states and the federal courts, and this Court's adjudication is needed to safeguard the fundamental liberties invoked or implied by the Fourteenth Amendment to United States Constitution.

The Arkansas Supreme Court's decision to affirm summary judgment and dismissal should be reversed, and petitioner's case should be remanded for a jury trial on the merits.

Respectfully Submitted,

FRANKLIN DAVID CHAMBERS
Pro se Petitioner